

**Exhibit 1 - Federal and Vermont Basis of Public Service Board Jurisdiction to Require  
Public, Educational and Government (PEG) Access Capacity and Financial Support**

**I. The Cable Communications Policy Act of 1984**

Within the Federal Communications Act of 1934, the Cable Communications Policy Act of 1984<sup>1</sup> contains the national mandate for regulators and cable operators to encourage the growth of cable systems, respond to community needs and interest and to assure the widest possible diversity of information sources:

The Cable Communications Act of 1984, Pub. Law 98-549, 1984 98 Stat. 2779, codified at 47 U.S.C. sec. 521 et seq., established a national policy for federal, state, and local regulation of the cable industry. Among the stated purposes of the Act were the establishment of franchise procedures and standards to encourage the growth and development of cable systems and to assure that cable systems were responsive to the needs and interests of the local community, 47 U.S.C. sec. 521(2); the establishment of guidelines for the exercise of federal, state, and local authority with respect to the regulation of cable systems, 47 U.S.C. sec. 521(3); and the

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<sup>1</sup> The Cable Communications Act of 1984, Pub. Law 98-549, 1984 98 Stat. 2779, codified at 47 U.S.C. sec. 521 et seq.  
<http://www.bbklaw.com/88E17A/assets/files/Documents/Cable%20Communications%20Policy%20Act%20of%201984,%20P.L.%2098-549%2010-30-1984.PDF>

**Search by Section:** <https://www.law.cornell.edu/cfr/text/47/part-76>

assurance that cable systems would provide the widest possible diversity of information sources and services to the public, 47 U.S.C. sec. 521(4).<sup>2</sup>

Specifically, **Title 47 - Telegraphs, Telephones and Radiotelegraphs, Chapter 5 - Wire or Radio Communications, Subchapter V-A - Cable Communications** states:

**(4) Sec. 521. Purposes: The purposes of this subchapter are to -**

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

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<sup>2</sup> The **Cable Act of 1984 Legislative History**, July 9, 2007.  
[HTTP://WWW.BBKLAW.COM/?T=40&AN=18382](http://www.bbklaw.com/?T=40&AN=18382)

(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

**"(a) Findings. - The Congress finds and declares the following:**

"(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

"(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

**"(b) Statement of Policy. -** It is the policy of the Congress in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under

this section and sections 325, 531, 543, and 554 of this title] to -

"(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

"(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

"(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

"(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

"(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers."

The Act authorizes the set aside of PEG capacity - defines both channels and non-channel applications and contemplates other uses of the electromagnetic spectrum.

**47 US Code Sec. 522. Definitions**

(1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

**(4) the term "cable channel" or "channel"** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

**"(5) the term 'cable service' means -**

"(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming services, and "(B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

**(12) the term "interactive on-demand services"** means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

The Act gave the Vermont PSB authority to designate channel capacity for public, educational or government use.

47 US Code 611. (a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section. ' -

"(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

"(c) A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

"(d) In the case of any franchise under which channel capacity is designated under subsection

(b), the franchising authority shall prescribe-

"(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

"(2) rules and procedures under which such permitted use shall cease

"(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section.

"(if For purposes of this section, the term 'institutional network' means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

The PSB can also designate revenue--franchise fees--to subsidize this public use:

"SEC.622. (a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.

## **II. Vermont Rule 8.000**<sup>3</sup>

Vermont Rule 8.000, first adopted in 1991, refers to the history and future of PEG Access. It is grounded in the EMCO Criteria, adopted by the Vermont Supreme Court in 1982. These criteria are the foundation of PEG requirements, which guided Vermont's Public Service Board from before the 1984 Cable Act. In fact, the first PEG access requirements were simply based on EMCO, clear demonstration of community need and examples from other communities.

Vermont Service Board Rule 8.214 specifies the criteria for evaluating a petition for cable television service:

“In determining whether to approve or reject a petition requesting a certificate of public good for a cable system service area, the Board shall consider the following:

(A) The criteria of **30 V.S.A. Chapter 13**.

(B) The criteria known as the EMCO criteria:

1. financial soundness and stability, both of the applicant generally and the particular proposal;

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<sup>3</sup> **Rule 8.000**,  
[http://psb.vermont.gov/sites/psb/files/rules/OfficialAdoptedRules/8000\\_Cable\\_Television.pdf](http://psb.vermont.gov/sites/psb/files/rules/OfficialAdoptedRules/8000_Cable_Television.pdf)



2. the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
3. the commitment to a construction and in-service schedule;
4. the experience and ability of the applicant to run and manage a cable tv system;
5. the tariff and the rates proposed to be charged to customers;
6. consumer policies, particularly re: complaints and problems;
7. availability of service to maximum number of residences;
8. the quality of the engineering and materials used in the system;
9. logical fit with neighboring systems.”

Subsequent revisions of Rule 8.000 reflect the Board’s understanding of the changing nature of PEG access in light of the cable industry’s transition from an analog to digital network.

In 1985, the Board added important language in support of upgrading PEG access channel and non-channel capacity of the cable tv network. These changes, noted here were added as result of a stipulated Agreement in Adelphia in Docket 6656/6587, resulting from Company opposition to the Board’s 6101 order requiring a 10% bandwidth set aside for PEG access purposes.

From the **PSB Docket 6101 Final Order dated April 28, 2000:**

26. Adelphia shall make not more than 10% of its total bandwidth available for Public, Educational, and Governmental access purposes; this amount may include some portion of the fiber network transferred to Hyperion. Refusal will trigger a payment from the Bond of \$10,000 per system per month. "Refusal" shall not include periods of reasonable negotiation nor submission by the Company of a request for a determination whether a particular allocation is reasonable. PSB Docket 6101.

Rule 8.000 now enables Vermont AMO's to request channel and non-channel capacity for public purposes:

**Rule 8.100 Definitions:**

**(L) Capacity:** portion of electromagnetic frequency spectrum used for commercial and public purposes.

**(M) Channel or cable channel:** a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel as that term is defined by the Federal Communication Commission regulations.

**(AA) PEG content:** any non-commercial voice, video, or information made available by members of the public, educational institutions, local or state government, or an AMO and distributed through PEG channels or cable system capacity set aside for such purposes.

The Rule was also updated in 1985 to accommodate PEG access channel and non-channel capacity upgrades, that is Rule 8.404 and 8.405.

#### **8.404 Activation of Additional PEG Channels or Other PEG Applications**

**(A) Additional PEG access channels.** Activation of additional PEG access channels may be requested at such time as the channels required by section 8.403 are in use.

**(B) Other PEG Applications.** A cable operator may propose, or an Access Management Organization may request, that a cable operator dedicate system capacity or facilities in a form other than a channel to support the distribution of PEG content to cable subscribers.

**(C)** It is not necessary to utilize the first three PEG channels prior to a request for other PEG applications. This does not preclude an AMO's ability to request and receive three PEG channels pursuant to section 8.403.

(D) Requests for PEG channels and other PEG applications shall be evaluated using the criteria and process provided in section 8.405 and implemented as negotiated between the operator and AMO or AMOs.

#### **8.405 Consideration of Requests for PEG Channels and Other PEG Applications**

Requests for the activation of PEG channels or other PEG applications shall be submitted to the operator and reviewed as follows:

**(A) The request must describe:** (1) The use or functionality for which the capacity will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace; (2) Examples of its use; (3) The community need that the PEG channel or PEG application is intended to address, how such community need has been ascertained, and how that need will be met by the PEG channel or PEG application requested; (4) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request; (5) The estimated cost of the functionality to the AMO and the extent to which the cable operator is expected to support the cost; (6) How the use or functionality can be sustained, financially and operationally, by the AMO, including commitments made by others to support the request; (7) Why the use or functionality requested is consistent with current or planned services to be offered by the existing or proposed AMO; (8) Other reasonable materials deemed necessary by the operator to consider such request.

**(B) Cable operators shall do the following in reviewing and responding to requests for PEG**

**channels or other PEG applications:** (1) Provide to the requesting AMO written

acknowledgment of receipt of the request and confirmation that the request is complete. If the

request is not complete, the cable operator shall so inform the AMO within 45 days, together

with an explanation of how the request is incomplete and a description of the information that is

needed to complete the request. (2) Once a request is complete, review and respond in writing to

the AMO's proposal within 60 days of submitting a complete request. If an extension is

necessary for adequate review or extenuating circumstances, the cable operator shall inform the

AMO in writing and provide a reasonable timeframe for responding to the request. (3) Offer the

requesting AMO an opportunity, to the extent possible, to discuss the request with regard to the

criteria listed in subsection (C) below, and mutually investigate possible alternatives should any

aspect of the request be problematic.

(C) The cable operator shall evaluate the AMO request using the following criteria: (1) Whether

any portion of the request would be in violation of, or would require amendment to, the cable

operator's certificate of public good or any existing PEG Access Agreement; (2) Whether and

how costs that would be incurred by the operator or the AMO would affect the cable operator

and cable subscribers; (3) Whether the cable operator has the capacity to meet the request, taking

into consideration existing and other potential uses; (4) Whether the request is consistent with the

cable operator's and the AMO's Access Plan; (5) Whether alternative more cost-effective

methods within the purview of the cable operator are available to meet the need asserted in the request; (6) Whether the request responds to community needs; (7) Other considerations that it deems relevant.

(D) Cable operators retain discretion to approve, deny, or amend such requests. If a cable operator denies an AMO request, it must provide a written explanation, addressing each of the criteria in subsection (C) and the grounds for denial.

(E) Resolution of disputes arising from requests may be reviewed by the Board.

### **III. Recent FCC Orders**

Nationally, the most recent federal order addressing Comcast's PEG related obligations can be found in the FCC's 2011 Order regarding the transfer of licenses between Comcast, General Electric and NBC Universal (MB Docket 10-56).<sup>4</sup> Vermont cable properties were considered to be part of this transaction .

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<sup>4</sup> FCC MB Docket 10-56, Memorandum Opinion and Order in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees, January 2011, <https://transition.fcc.gov/FCC-11-4.pdf>

The FCC's Memorandum Opinion and Order of January 20, 2011 gives the context for Comcast in the video programming environment in the first quarter of the 21<sup>st</sup> century. The FCC spells out its overarching support for program diversity and PEG as well as specific requirements related to signal quality and provision of digital services for PEG uses. The FCC's mandate for localism and diversity in video programming distribution is consistent with Vermont's own statutes and the Cable Act.

The FCC Opinion and Order specifically addresses commitments made by Comcast for PEG Channels (at pp. 86-90). Initially, the FCC states that "Public, Educational, and Governmental ("PEG") Programming. Comcast will safeguard the continued accessibility and signal quality of PEG channels on its cable television systems and introduce new on demand and online platforms for PEG content" (p. 5).

In further discussion of PEG (at p. 89, #213) the FCC points out that "Congress afforded PEG channels special status in order to promote localism and diversity, and we [the FCC] believe that this transaction requires us to ensure that these objectives are preserved. In addition, Congress has noted 'PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry.'"

The FCC imposed the following conditions in MB Docket 10-56:

214. Therefore, we impose as a condition the Applicants' commitment to refrain from migrating PEG channels to digital until the entire system is converted to digital or until "a community

agrees.” Moreover, we believe the public interest is served by requiring Comcast to maintain PEG channels on its digital starter tier (D0), or on an equivalent tier that reaches at least 85 percent of Comcast’s subscribers.

We believe that this condition—in conjunction with maintaining PEG on the analog tier until a system goes all-digital or until the appropriate authority expressly agrees otherwise—is necessary in order to ensure that the Applicants do not harm PEG as a result of the increased inventory of programming content and broadcast outlets that the combined entity would own or control.

To address concerns about discrimination in the delivery of PEG channels that arise because of this increased inventory, we also impose a condition that Comcast cannot discriminate against PEG with respect to the functionality, signal quality, and features from those of the broadcast stations that it carries.

We decline to adopt additional proposals regarding channel placement and movement discussed above. Placement of PEG channels is not an issue related to the proposed transaction, and is often dictated by franchise agreement and/or state and local regulations. We also decline to adopt NATOA’s proposal that PEG programming currently being provided in a digital format be moved back to an analog format, as we believe such a mandate would be disruptive to consumers and not in the public interest.



215. With respect to the Applicants' On Demand and Online PEG commitment, we also make the commitment a condition and require them to submit semi-annual reports to the Commission, starting six months after closing the transaction, on the progress of its online and VOD platform development.

We also establish a series of benchmarks for deployment, outlined in Appendix A. We believe that these time frames are reasonable to allow Comcast-NBCU to analyze the data from the tests necessary to properly develop these platforms in a manner that will maximize their long term benefit to the public.

Finally, we believe that Comcast's commitment that it will not play an editorial role in determining which PEG programming will be available either on VOD or On Demand Online should allay the concerns about Comcast's involvement in selecting PEG content for VOD. We agree with the Applicants that all other PEG-related proposals by commenters are either not transaction-related or not in keeping with existing law, and we therefore will not apply them as conditions here. (pp. 89-90)